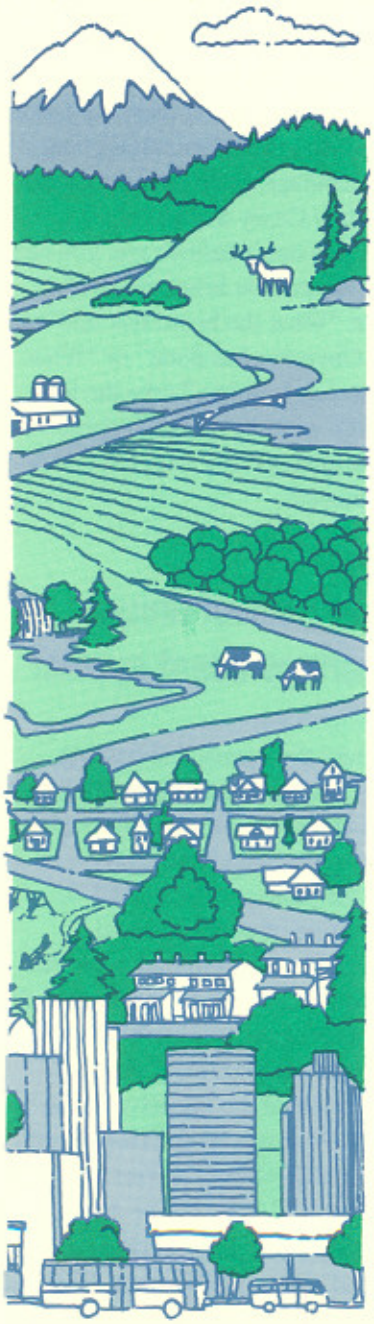
About Growth

A Quarterly Publication About Growth Management — Summer 1996

Washington State Community, Trade and Economic Development

Building Foundations for the Future



Lawmakers select unique state hearings board system

When legislators were debating how disputes under the Growth Management Act should be handled, they wanted to create a system that was timely and effective.

The court system was not seen as a viable mechanism, said Mike McCormick, former CTED assistant director for growth management. Long delays were likely to occur due to crowded court calendars and the potential for a large number of disputes and appeals under the GMA. Also, lawmakers wanted experts in land use to be making the decisions on appeals.

The idea for a hearings board system was brought to the negotiating table by business and was supported by agriculture and cities and counties. Most of the people involved in the negotiations did not want the state Department of Community Development (now CTED) to certify plans or to have rule making authority for growth management, said Robert Mack, attorney, a lobbyist at that time for the city of Tacoma. They did not want CTED to develop rules to clarify GMA requirements.

This has resulted in the situation we have today, Mack added, where board decisions are seen as the major way the GMA is clarified.

Three boards were created because some of those involved in the negotiations had concerns about how other state boards operate. Lawmakers thought that three boards would be better able to recognized regional variations in the state. Also, if more than one board was established, cases would be decided more quickly.

The hearings board system was seen as one that would be tried out, evaluated, and changed later, if necessary.

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Observations on Western board decisions

By Les Eldridge
Member, Western Washington
Growth Management Hearings Board

In their assessment of board decisions, some observers have given special notice to the following:

We have held that an adequate record requires a jurisdiction to show its work and demonstrate a reasonable outcome in view of the record.

The process is both bottom-up and top-down. Local jurisdictions develop their plans within the framework of the goals and requirements of the act.

We have consistently held that the presumption of validity can only be overturned by a preponderance of the evidence. The presumption of validity, however, can be challenged if a petitioner makes a prima facia case that the presumption can be challenged. The burden of proof does not shift but a response is needed from the respondent.

We have stated that "no finding of invalidity (nor finding of non-compliance) can preclude preexisting platted non-contiguous lots of separate legal ownership from consideration of eligibility for build out by a county" (No. 95-2-0065 and No. 95-2-0063).

Parties sometimes have been reminded that the mandatory elements and

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ABOUT GROWTH

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Mike Fitzgerald, Director
Steve Wells, Assistant Director
Holly Gadbaw, Planner
Rita R. Robison, Editor

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Growth management progress continues

By Steve Wells
Assistant Director, Growth Management Services

The announcement by Governor Lowry of a definite timeline for Chelan County to avoid the imposition of sanctions has generated considerable interest by the press in the Growth Management Act. This has been a wonderful opportunity for us to publish the facts about the current state of the program, and the news is extremely positive.

We are emphasizing several themes.

First, most jurisdictions are successfully moving ahead with GMA implementation. Over 170 draft comprehensive plans have been submitted to CTED for review and comment. Development regulations, particularly those implementing the regulatory reforms of ESHB 1724, are pouring in, with over 45 packages delivered in April. More than 700 actions have been taken by counties and cities to implement the GMA. Though most have not been appealed at all, as of May 16, 1996, 326 cases have been appealed to the three growth management hearings boards. Sixty-three of those have led to remands, meaning that in 80 percent of the cases the local government has been upheld. Only 11 are in continued noncompliance.

Second, counties and cities are seeing tangible returns on their investments in good planning. For example, the decision by Taiwan Semiconductor Manufacturing Co. to invest $1.2 billion in Camas rather than in another state gives a return from one project more than 8.5 times the total expended by counties and cities since 1990 in GMA planning. And the city of Camas credits their having a GMA plan on the shelf for their being able to promptly provide Taiwan Semiconductor with answers. Using 1995 data was a critically important factor in their wooing of this very attractive chip manufacturing facility.

Third, the growth management hearings board system, while not perfect, is working well for prompt and effective resolution of the overwhelming majority of GMA disputes. This newsletter features articles on the work of the boards, why the hearings board system was selected, and how to prepare a record for challenges before the Western board. Each hearings board was asked to submit an article. A summary of legislation from the 1996 session also is included.

Given the emotional and ideological nature of the GMA debate, there's a lot of exaggeration and misinformation going around. I encourage us all to make extra effort to follow Casey Stengel's advice..."If you don't believe me, you can look it up." When you hear someone's report about "What the board has said" or "What the Governor has done" or "What that state agency is doing," take the time to check back with the original source. You'll be helping greatly with the GMA education process.

Lawmakers select unique state hearings board system

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In creating the boards and passing other GMA implementation procedures in 1991, the Legislature followed through on its promise to strengthen the GMA. Following the passage of the GMA in 1990, a coalition of environmental organizations placed an initiative on the ballot. It would have established a growth management program similar to Oregon's where the state certifies local plans.

Voters defeated the initiative in the fall of 1990. Promises by the House and Senate leadership of both parties to strengthen the GMA, including a way to ensure that local government plans met the goals and requirements of the GMA in a timely way, helped defeat the initiative.

Eastern board emphasizes mediation

By Judy Wall, Tom Williams and D.E. "Skip" Chilberg
Members, Eastern Washington Growth Management Hearings Board

The Eastern Washington Growth Management Hearings Board defers to local preference in its decisions so long as the requirements of the Growth Management Act are met.

When working on a decision, we ask ourselves that question, "Are we substituting our judgment for local government's judgment?" If local governments have established a good record and are within the boundaries of the law, we will defer to the them.

On the board's recent Ferry County decision, we determined that lots 2-1/2 acres or greater could be considered rural due to the unique nature of the county. The board accepted the county's decision on what is rural.

With Ferry County, you are looking at a county that is larger than King county in size, with a population of about 8,000 and with 86 percent of the land publicly owned. Those factors are unique to Ferry County. It has a lot more forest and federal land than perhaps anywhere else in state.

We also told the county that development at more than one unit per 2-1/2 per acres must occur within urban growth areas and urban level services need to be provided.

The Eastern board emphasizes mediation. Part of our procedure is to discuss the possibility of mediation at the prehearing conference. It has worked well in several cases:

Coalition of Responsible Disabled vs. City of Spokane. The petitioner was bought into the discussions about timelines for accessibility for the disabled.

Advantage Homes vs. City of Ephrata. The parties are working together on an agreement for mobile homes to be allowed on individual lots within the city.

City of College Place vs. Walla Walla County. The city and county are negotiating on the urban growth area for the city. In all three cases, the petitioners withdrew their petitions.

When people work together and agree on a solution, it is a win-win situation for everyone. About half of cases that come before the board are candidates for mediation where the parties are not or have not been talking with each other and could probably come to a solution. If the parties mediate their issues, they retain control of the outcome. We think if they can decide it themselves, it will be a decision all parties can and will live up to.

The board is beginning to see more cases on urban growth areas. As more UGA boundaries are drawn in Eastern Washington, these cases will be a greater part of our workload.

In most of our cases where we have found noncompliance, the local governments have not shown in the record how they came to their decision. Procedurally, we were left with no choice but to find them in noncompliance.

Observations on Western board decisions

Continued from page 1.

requirements of the act include designation and protection or conservation of critical areas and natural resource lands (RCW 36.70A.060). Mandatory elements include land use, housing, capital facilities, utilities, transportation, and a rural element (RCW 36.70A.050, .070[5]), which includes lands that are not designated for urban growth, agriculture, or forest or mineral resources. The rural element allows appropriate land uses compatible with rural character and provides for a variety of rural densities and uses that must accommodate appropriate rural uses not characterized by urban growth. Rural requirements are further delineated by RCW 70A.110 which requires designation of an urban growth area within which urban growth shall be encouraged and outside of which growth can occur *only if it is not urban in nature* (emphasis added). We have stated that this preclusion includes urban residential, urban commercial, and urban industrial development.

The application of findings of invalidity from the Western board include pre-GMA ordinances in "failure to act" cases (No. 95-2-0063) and remedial invalidity — invalidity applied to actions prior to July 23, 1995. (No. 94-2-0017). Parties have been reminded of the requirement that any building permitted during the period of invalidity must be in compliance with a subsequent ordinance brought forth as a result of the invalidity and which itself is found to be in compliance.

We have placed more and more emphasis on mediation and have provided recommendations to the legislative Government Operations committees and to the Land Use Study Commission on ways to increase prepetition mediation figures.

We have held, by 2 to 1, that standing requires written or verbal participation, rather than only attendance at hearings.

Further Western board holdings include: Local governments must gather information and perform an adequate analysis of land capacity, fiscal impacts, and capital facility needs before adopting IUGAs.

Development regulations must be adopted to prevent incompatible uses from encroaching on resource lands.

Reliance on pre-existing ordinances must show adequate public process and compliance with the act.

1996 Legislature passes a variety of growth management-related laws

SSB 6637 — Growth management hearings boards (C 325 L 96)

Courts are to expedite reviews on invalidity determinations made by the boards. Hearings on the issues are to be scheduled within 60 days of the date set for submitting the board's record.

The boards are required to publish their decisions and arrange for reasonable distribution of them. The Administrative Procedures Act is to be used for the boards' procedures, unless it conflicts with RCW 36.70A. The APA also is to be used to determine whether a board member or hearing examiner will be disqualified.

In addition, this law clarifies who may file petitions with the boards.

SSB 6422 — General aviation airports (C 239 L 96)

General aviation airports are added to the list of items that all local governments must include in the land use elements of their comprehensive plans. General aviation airports include all the airports in the state, about 500, except Seattle-Tacoma and Spokane International airports. The purpose of the law is to protect airports from incompatible land uses. Local governments are to "discourage," through comprehensive planning and development regulations, the siting of incompatible uses adjacent to general purpose airports.

All proposed and adopted plans and regulations are to be filed with the Aviation Division of the Washington State Department of Transportation within a reasonable time after release for public consideration and comment. The division will offer technical assistance.

Any additions or amendments to comprehensive plans or development regulations required by this law can be adopted "during the normal course of land-use proceedings."

ESHB 2875 — Puget Sound Water Quality Action Team (C 138 L 96)

The Puget Sound Water Quality Authority is replaced with the Puget Sound Water Quality Action Team, which operates out of the Governor's Office. The action team's membership includes the directors of state resource agencies and CTED, a county representative, a city representative, and a chair, who is a full-time staff member. The action team will: 1) develop two-year work plans and budgets, 2) conduct ambient monitoring, (3) identify and prioritize local and state actions necessary to address water quality problems in five locations, (4) develop performance measures, (5) report to the Legislature, and (6) perform other duties. The action team will be advised by the Puget Sound Council, made up of members from interest groups and two (nonvoting) members of the Legislature.

HB 2567 — Property action notification (C 254 L 96)

When GMA local governments notify property owners of permit decisions, they also are required to state that the owner may request a change in valuation for property tax purposes. In addition, local governments are required to notify assessors' offices of permit decisions and send copies of comprehensive plans and development regulations to assessors.

This law also authorizes the county assessor to change valuations as appropriate when a notice of a decision from the local government is received.

The departments of Ecology, Natural Resources, Fish and Wildlife, and Health are required under this law to notify appropriate county assessors of the agencies' permit decisions.

ESHB 2485 — Property tax/government restrictions (C 296 L 96)

The "manifest error" procedure to correct assessment errors on the assessment or tax rolls is altered by adding a new procedure to revalue property. The assessor will be able to revalue property if the taxpayer produces proof that an authorized land use authority has made a "definitive change" in the property's land designation and the assessor and taxpayer sign an agreement on the true and fair value of the property. A correction under the new procedure will not be made for an assessment more than three years prior to the year in which the error is discovered.

If assessments are reduced under the new procedure, a taxpayer will be eligible for a refund in taxes that were paid based on the higher valuation.

SSB 6236 — Shoreline management projects (C 62 L 96)

This law establishes in statute requirements for shoreline permit experation. Local government can set an experation date based on reasonable factors for each permit. If no experation date is specified, a default experation of two years to start a project and five years to complete it is established. Local government may extend either period for up to one year. The law also requires that the "clock" does not start until all reasonably related permits have been obtained.

SHB 2772 — Docks/substantial development (C 265 L 96)

This law raises from $2,500 to $10,000 the construction cost of a private, residential dock for the construction to be considered "substantial development" in fresh water under the Shoreline Management Act. Community docks designed for pleasure craft only are included in the definition of private, residential dock.

E2SHB 2222 — Government programs/legislative oversight (C 288 L 96)

The Legislative Budget Committee is renamed the Joint Legislative Audit and Review Committee and it receives new duties. It will conduct performance audits on state agencies and local governments receiving state funds.

A performance audit is defined as an objective and systematic assessment, including economy and efficiency audits, program audits, and performance verifications.

SHB 2386 — Agency technical assistance (C 206 L 96)

This law requires the text of laws and rules to be provided as a part of state agency technical assistance programs. Regula-

tory agencies are directed, in certain instances, to supply the text of the specific section or subsection of the applicable state or federal law or rule. The departments that are to issue such notices are Ecology, Labor and Industries, Agriculture, Fish and Wildlife, Health, Licensing, and Natural Resources.

This law requires towns, cities, and counties to issue a property owner a written statement of restrictions that apply to real property, if requested, within 30 days. It will require that city and counties having populations of 10,000 or more planning under the GMA to designate permit assistance staff whose function it is to assist permit applicants.

SHB 2463 — Salmon restoration plans (C 210 L 96)

By July 1, 1996, specific programs within the state Department of Fish and Wildlife are directed to develop and implement a salmon enhancement plan for watersheds affected by fishery closures along the North Olympic Coast, the Straits of Juan de Fuca, and Hood Canal.

The plan will be required to identify factors limiting production and develop short- and long-term plans to address them. The plan must also: 1) use volunteers; 2) emphasize the restoration of coho, Chinook, and other weak stocks; 3) use viable fishery enhancement tools including remote site incubators, where appropriate; 4) develop cost estimates for restoration activities; and 5) identify opportunities to share the cost of restoration with other governmental and non-governmental entities.

By December 1, 1996, Fish and Wildlife is required to submit a report to the Legislature on the implementation of short-term plan activities and on the projected time frames for long-term activities.

SSB 5053 — Disclosing real estate information (C 301 L 96)

The real estate disclosure form question on whether the property is in a designated flood hazard area is deleted. Questions of whether a property is subject to a sewer capacity charge and whether there has been land slippage are added.

CTED's Growth Management Services will work with the Washington Association of Realtors and other interested parties to develop a question for the disclosure form, which will include a reference to sellers about where to find information concerning flood hazard zones. Re-working this question will allow sellers to disclose clear, accurate information on this topic without becoming bogged down in technical ambiguities.

HB 2467 — Industrial developments (C 167 L 96)

The Growth Management Act is amended to allow a pilot project to designate an urban industrial bank outside urban growth areas. A county may establish the pilot project if it has a population of more than 250,000 and if it is part of a metropolitan area that includes a city in another state with a population of more than 250,000 (Clark County). The urban industrial land bank may consist of no more than two master planned locations. Priority is to be given to locations that are adjacent to or in close proximity to an urban growth area. The same criteria are to be met that are required under the existing major industrial development process in the GMA. The pilot project terminates on December 31, 1998.

ESHB 2537 — Irrigation district boards (C 320 L 96)

This law modifies procedures for the creation and operation of irrigation district joint control boards. A board of joint control may be created by two or more irrigation entities which own, or have an ownership interest in, water rights having the same source of water or which use common works for the diversion. County commissioners may grant or reject a petition to create the proposed board(s).

A board will not be able to authorize a change in any water right that will change the point of diversion without the state Department of Ecology's approval. Transfer of saved water cannot injure existing instream flow water rights outside the board's jurisdiction. Approval from the federal Bureau of Reclamation for changing the point of diversion will be required.

SHB 2733 — Well construction (C 12 L 96)

The Department of Ecology's authority to delegate parts of the well construction program to qualified local health districts and counties is extended until June 30, 2000. Local governments will be able to exercise authority over the well drilling provisions outlined in this law.

2SHB 2031 — Storm water facility charges (C 285 L 96)

Local storm water utilities will be able to use assessment charges collected from the state Department of Transportation only for capital projects that address state highway storm water impacts or for implementation of best management practices that reduce the need for such facilities. Each jurisdiction is required to develop an annual plan for expenditure of the fees in coordination with WSDOT.

This law creates a storm water management funding and implementation program and authorizes WSDOT to provide grants, on a matching fund basis, to fund selected storm water projects. The program will sunset on July 1, 2003.

SB 6428 — Irrigation district mergers (C 313 L 96)

This law allows drainage and diking districts to merge based on a petition to the county legislative body submitted by 10 or more landowners or the special district's board of supervisors.

SB 6366 — Lewis & Clark Trail Bicentennial (C 65 L 96)

The Washington State Historical Society is directed to work with and provide leadership to the Lewis and Clark Trail Committee in planning commemorative activities relating to the expedition. The society is to coordinate its efforts with the state Parks and Recreation Commission and is to work with other associations and state agencies to distribute information about planned activities.

HB 2509 — Maritime historic preservation (C 3 L 96)

This law requires the state Department of Licensing to provide people who are registering their vessels an opportunity to make voluntary donations to support the maritime historic restoration and preservation activities of the Grays Harbor Historical Seaport and the Steamer Virginia V Foundation.

Who's on the growth boards?

Western Washington

Nan Henriksen was mayor of the city of Camas from 1983 to 1992 and a business owner in Camas for many years. Henriksen served as president of the Association of Washington Cities and the Planning Association of Washington.

Les Eldridge was elected to three terms as a Thurston County commissioner. Other positions include assistant to the president at The Evergreen State College and vice president of a national recycling firm.

William Nielsen has worked as a hearing examiner, a deputy prosecutor, and a private attorney. His primary work has been in the areas of environment and zoning, property disputes, and appellate practice.

Eastern Washington

Judy Wall is co-owner of J&G Wall Inc. farming apples in the Chelan area. She spent 11 years in the banking business and served as a commissioner on the Lake Chelan Hospital Board.

D.E. "Skip" Chilberg served as Spokane County treasurer for 11 years and Spokane County commissioner for two years. He also directed a housing finance organization and worked as state budget director in Idaho.

Dennis Dellwo served 14 years in the Washington State Legislature. He was one of the participants in passage of the GMA. An attorney, Dellwo has represented businesses, individuals, and environmental groups on land use issues. He begins his Eastern board duties July 1.

Central Puget Sound

Chris Smith Towne has been a member of the Bellevue City Council and the State Pollution Control and Shoreline Hearings boards. She also has worked as deputy chief of staff in the Governor's office and for a law firm mediating natural resource, land use, and governance disputes.

Joseph Tovar worked as the planning director for the city of Kirkland for 12 years. A member of the American Institute of Certified Planners, he serves on the Professionals Advisory Council to the University of Washington Department of Urban Design and Planning.

Prior to Peter Philley's appointment to the board, he was a deputy prosecuting attorney with the Kitsap County Prosecuting Attorney's Office Civil Division, focusing on land use and environmental issues. He has also served as the land use lobbyist for the Washington Association of Prosecuting Attorneys.

Summary of major conclusions in Central Puget Sound board decisions

By Chris Smith Towne
Administrative Chair, Central Puget Sound Growth Management Hearings Board

The growth management hearings boards began their fifth year of operation in May, and the Central Puget Sound board celebrated the occasion by receiving its 163rd appeal.

The nature of appeals filed over four years has tracked the sequence of required actions set forth in the Growth Management Act. This year's cases primarily concern regulations implementing comprehensive plans and amendments to plans and regulations.

The following are highlights of 1996 board decisions.

Benaroya and Cosmos vs. City of Redmond, No. 95-3-0072

A city may not make agricultural land designations within an urban growth area prior to its enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4).

A city must comply with a county population allocation and may not unilaterally modify a critical assumption, such as a population per household factor, that was used to generate that allocation.

In order for state, county, and city governments to coordinate their efforts to manage growth, they must be operating from the same set of assumptions and policy directives. To determine how and by whom growth will be accommodated requires a shared understanding of how much growth is coming (i.e., the Office of Financial Management projection) and where specifically it will be directed (i.e., the sub-county allocations to cities).

Sky Valley, et al. vs. Snohomish County, No. 96-3-0068c

A pattern of 10-acre lots is clearly rural; a new land use pattern that consists of between 5- and 10-acre lots is an appropriate rural use subject to certain provisos; and any new land use pattern of lots smaller than 5 acres would constitute urban growth and is therefore generally prohibited in rural areas. The exceptions to this general rule are few and will be more difficult to justify as the density increases.

A rural residential land use pattern of lots smaller than 5 acres must be eliminated, or, in the alternative, provisions of the plan modified, so that the number, configuration, and location of such lots do not constitute urban growth. Future clustered development in the rural area must be configured and served to constitute compact rural development rather than urban growth.

Counties and cities may adopt development regulations for designated forest lands that regulate these lands differently (in manner or degree) as long as adopted development regulations assure the conservation of forest lands.

Counties and cities must designate all lands that meet the definition of agricultural lands, unless the lands fall within a UGA lacking a program for the purchase or transfer of development rights; also, counties and cities must adopt development regulations to assure the conservation of all designated agricultural lands.

The best source of information is the decisions themselves. Call the board at 206-389-2625 to request a copy.

Editor's Note: The above article is a summary of an eight-page synopsis of recent decisions by the Central Puget Sound board. Space does not permit including the entire document here. Call CTED at 360-753-2222 if you would like a copy.

New masters program offered

The UW Graduate School of Public Affairs now offers an evening Masters of Public Administration degree for professionals and planners who work in or with the public sector. Call 206-543-4900 for details.

Growth management hearings boards

Listed below is action on existing cases before the state's growth management hearings boards. Call the boards for information on new cases filed:

Central Puget Sound	206-389-2625
Western Washington	360-664-8966
Eastern Washington	509-454-7803

Central Puget Sound

Case No. 95-3-0008 Status: Finding of compliance 5/24/96

Vashon-Maury Island Community Council, et al. vs. King County. Subject: Comprehensive plan, UGA, rural areas, environmental review, and forest lands. Appealed to superior court.

Case No. 95-3-0016c Status: Finding of compliance 5/20/96

City of Gig Harbor, et al. vs. Pierce County. Sections on the Rural 5 designation and rural activity center designations for South Gig Harbor and Tacoma Narrows Airport were corrected.

Case No. 95-3-0039c Status: Finding of noncompliance 4/15/96

City of Bremerton, et al. vs. Kitsap County: The board recommended that the Governor impose sanctions on the county if a new comprehensive plan and development regulations are not adopted by 9/3/96.

Case No. 95-3-0053 Status: Finding of compliance 4/15/96

Association to Protect Anderson Creek vs. City of Bremerton. The city had corrected its comprehensive plans and critical areas ordinance.

Case No. 95-3-0068c Status: Decision 3/12/96

Concerned Citizens for Sky Valley, et al. vs. Snohomish County. Compliance with the GMA was found, except for sections on rural residential designations, provisions for the Maltby Employment Area, essential public facilities process, reduced forest lands acreage, and landowner intention as a criteria for removal of designated forest lands. Compliance deadline 9/6/96.

Case No. 95-3-0071 Status: Decision 3/20 & 3/22/96

Peninsula Neighborhood Association vs. Pierce County. Subject: Non-compliance with the GMA was found on four issues: rural activity centers, Rural 5 zoning, accessory dwelling units, rural shoreline density exceptions, and nonconforming use development regulations. Compliance deadline 7/21/96. Appealed to superior court.

Case No. 95-3-0072c Status: Decision 3/25/96

Benaroya Shareholders Trust, et al. vs. City of Redmond. The board found compliance except for sections on household population assumption, residential densities, agricultural designations, and the average net density for a property. Compliance deadline 9/23/96.

Case No. 95-3-0073 Status: Decision 4/2/96, Order 5/14/96

West Seattle Defense Fund, et al. vs. City of Seattle. Subject: The board found non-compliance on an urban village ordinance. Compliance deadline 8/19/96.

Case No. 95-3-0075 Status: Decision 5/10/96

Hapsmith Co., et al. vs. City of Auburn. Compliance was found except for two issues: assessment of impacts of transportation on adjacent jurisdictions and adoption of a process for siting essential public facilities, such as rail and intermodal facilities.

Case No. 95-3-0076 Status: Decision 5/12/96

Barry and Jan Shulman vs. City of Bellevue. The board found compliance on all three issues, which were dismissed.

Case No. 95-3-0081c Status: Dismissed 5/12/96

Martin Hayes vs. Kitsap County. Dismissed for lack of jurisdiction.

Case No. 96-3-0008 Status: Dismissed 5/13/96

Baker Commodities Inc. vs. City of Tukwila. Subject: Comprehensive plan and development regulations.

Case No. 96-3-0013c Status: Dismissed 5/15/96

COPAC-Preston Mill Inc. and Hallstrom vs. King County. Subject: Comprehensive plan.

Case No. 96-3-0015 Status: Dismissed 5/13/96

Hartson, et al. vs. City of Bellevue, et al. Subject: Development regulations.

Case No. 96-3-0017 Status: Dismissed 5/13/96

Rural Residents vs. Kitsap County, et al. Planned unit development.

Western Washington

Case No. 94-2-0009 Status: Third finding of non-compliance and finding of invalidity 3/29/96

Whatcom Environmental Council vs. Whatcom County. Subject: Designation of IUGAs. Appealed to superior court.

Case No. 95-2-0063 Status: Second compliance order, finding of invalidity 4/11/96

Whidbey Environmental Action Network vs. Island County. Comprehensive plan and development regulations.

Case No. 95-2-0065 Status: Compliance hearing, IUGAs 6/26/96

Friends of Skagit County, et al. vs. Skagit County. Finding of compliance on critical areas 5/16/96.

Case No. 95-2-0071 Status: Decision 12/20/95, Compliance hearing 6/25/96

Whatcom Environmental Council, et al. vs. Whatcom County. Subject: Critical areas designation and regulation. Sections 3, 9, 10, 11, and 12 were found in non-compliance. Sections 9-12 of the ordinance were found invalid. Appealed to superior court.

Case No. 95-2-0073 Status: Compliance hearing, 5/21/96

John Diehl, et al. vs. Mason County. Finding of non-compliance on interim resource ordinance. Finding of compliance for comprehensive plan.

Case No. 95-2-0075 Status: Compliance hearing 6/26/96

Friends of Skagit County vs. Skagit County. Subject: Resource lands and critical areas.

Eastern Washington

Case No. 94-1-0022 Status: Third compliance hearing to be scheduled

Yakama Indian Nation vs. Kittitas County. Subject: Critical areas compliance.

Case No. 95-1-0002 Status: Decision 2/28/96

Victor and Roberta Moore vs. Whitman County. The board found the county in procedural compliance.

Case No. 95-1-0007 Status: Continued to 12/31/96

Kittitas County vs. City of Ellensburg. Subject: Comprehensive plan.

Case No. 95-1-0008/0009 Status: Compliance deadline 9/6/96

City of Ellensburg, et al. vs. Kittitas County. The board found the county partially in compliance. It gave the county until 9/6/96 to bring the remaining three issues relating to designating and conserving agricultural lands into compliance.

Case No. 95-1-0010 Status: Compliance deadline 9/13/96

Gary Woodmansee, et al. vs. Ferry County. Subject: The board found the county in partial compliance with four issues to be brought into compliance: short plat ordinance; designation of agricultural, forest, and mineral lands; urban densities outside urban growth areas; and designation of wetlands, fish and wildlife habitat, and aquifer recharge areas.

Case No. 96-1-0001 Status: Dismissed 4/23/96

City of College Place vs. Walla Walla County. The parties reached an agreement.

Case No. 96-1-0003 Status: Decision 6/5/96

City of Ellensburg vs. Kittitas County. Subject: The county's county-wide planning policies were found in non-compliance and returned to the county.

Case No. 96-1-0004 Status: Petition withdrawn 5/6/96

Advantage Homes vs. City of Ephrata. Subject: Mobile homes. Negotiated settlement reached.

Case No. 96-1-0005 Status: Hearing 8/13/96

Victor and Roberta Moore vs. Whitman County. Subject: Critical areas; fish and wildlife habitat

Preparing records for Western board cases

By Nan Henriksen
Member, Western Washington
Growth Management Hearings Board

"The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision."
(RCW 36.70A.290[4])

In deciding cases our board has focused almost entirely on the record developed by the local government. We have not allowed material that could have been, but was not, submitted by petitioners during the local decision-making process. We have also not allowed testimony or documents developed after the challenged decision.

Therefore, it is important that all affected parties participate at the local level and provide local decision-makers with all information that is needed to enable them to make well-informed decisions that comply with the Growth Management Act. It is likewise imperative that local governments develop and maintain a complete record of the information provided and their entire local decision-making process.

We offer the following tips to local governments for developing an effective record:

- Make sure you keep your process well documented from the beginning. Tape record and keep good records from all meetings (e.g., advisory boards, planning commission, and decision-making body).
- Keep organized files of all materials (e.g., documents, tapes and minutes of meetings, correspondence sent and received) that pertain to development of a GMA action.
- Encourage decision makers to state their thought processes in reaching their decisions, thereby reflecting a thorough and well-reasoned outcome.
- Include in your ordinances a complete set of findings that led to the policies and regulations being adopted.

If an action is challenged, the local government is required to prepare an index of its record within 30 days of the date a petition is filed. The index is simply a numbered list (usually in chronological order) of all materials that were part of the development of the action being challenged. If you have followed our previous tips, this requirement should not be too painful.

The listed materials must be made available for timely review by the petitioners who then may add to that index list any additional items which should have been included in the original local government index. During that period the local government also has the opportunity to add to the index any items it may have overlooked in its original listing.

Our rules do provide for supplementation with additional evidence. However, a proponent must file a motion and carry the burden of convincing us that such supplemental evidence is "necessary or of substantial assistance" to us in reaching a decision.

Over the past four years, we have modified the method by which the record is supplied to us to lessen the burden on local governments.

We hope this advice will be helpful to you in preparing materials in cases before the board.

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WASHINGTON STATE
COMMUNITY, TRADE AND
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Growth Management Services
906 Columbia Street SW
PO BOX 48300
Olympia, WA 98504-8300